

Award No. 10456
Docket No. CL-10359

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE WASHINGTON TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment of the Brotherhood that:

(1) The Carrier violated the agreement when it refused to pay Charles A. Warren, Otis W. Adams, Peter J. Stathis, Stores Attendants; Samuel S. Crockett, Store Attendant Checker; and Dominic Leonardi, Group 1 Clerk, for time off account of sickness;

(2) The Carrier shall now be required to pay these employes for time lost on account of sickness as follows:

Charles M. Warren	One day	December 13, 1956
Otis W. Adams	One-half Day	March 11, 1957
Peter J. Stathis	One day	March 15, 1957
Samuel S. Crockett	One day	April 22, 1957
Dominic Leonardi	One day	May 28, 1957

EMPLOYEES' STATEMENT OF FACTS: This claim originates because of the refusal of the Carrier to grant pay for time lost on account of sickness to the five employes listed above, claiming that only Group 1 Clerks are included in the Sick Leave Agreement; in the case of Dominic Leonardi, the claim was denied on the basis that he had not been a Group 1 Clerk for at least one year.

The Sick Leave Agreement is all-inclusive so far as employes under the Clerks' Agreement are concerned, regardless of the positions they hold.

On December 13, 1956, Stores Attendant Charles M. Warren was absent due to a "cold in kidneys." On December 18, 1956 he filed the prescribed form (WT-80) furnished by the Carrier for the purpose of claiming sick leave pay.

On December 18, 1956, this Form WT-80 was returned by the Storekeeper, T. C. Jordan, with a notation attached thereto reading:

"Your claim has been denied by Master Mechanic."

service as a Group I clerk for a period of one year, and inasmuch as it is the Carrier's position that the Sick Leave Agreement applies only to Group I clerks, the validity of which position is established by 22 years of past practice, Leonardi would not become eligible for the sick leave allowance until he performed service in the capacity of a Group I clerk for the period of a year. With these distinctions, the Carrier's position that the Sick Leave Agreement applies only to Group I clerks has equal applicability to the claims involving Stathis and Leonardi.

CONCLUSION: The Carrier has shown that the Memorandum of Agreement dated July 10, 1936, the modification thereof to conform to the 40-Hour Week, and 22 years of past practice, establish that the sick leave allowance provided therein applies only to Group I clerks. Secondly, that the Organization is attempting to secure from this Board, through the claim procedure, a new rule which it is precluded from attempting to secure in negotiations over the conference table during the period of the moratorium provided in Article VI of the November 1, 1956 Agreement.

In view of the foregoing, the Carrier submits that the claims submitted by the Organization are without merit and should be denied.

All data used herein has been submitted to, discussed with, or is known by the employees' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimants in this action are requesting that the Carrier be required to pay them for time lost on account of sickness as follows:

"Charles M. Warren	One day	December 13, 1956
Otis W. Adams	One half day	March 11, 1957
Peter J. Strathis	One day	March 15, 1957
Samuel S. Crockett	One day	April 22, 1957
Dominic Leonardi	One day	May 28, 1957"

The Carrier does not question the fact that illnesses involved in this claim are bona fide. It takes as its basic defense to the claims that the sick rule of the contract applies only to those employees classified as "clerks," Group I under the Agreement and does not include "other office and station employees" also covered under the Agreement. It points out a long historical background in which, with few exceptions, only "clerks" have been paid sick leave by the Carrier.

On the other hand the Organization takes just as firm a position that the Agreement under its express terms applies to all employees and is not limited to clerks. The pertinent part of the working Agreement involved in this case reads as follows:

"AGREEMENT BETWEEN THE WASHINGTON TERMINAL COMPANY AND ALL THAT CLASS OF CLERKS AND OTHER OFFICE AND STATION EMPLOYEES, REPRESENTED BY THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

ARTICLE I — SCOPE

“RULE 1 — Employees Affected.

“The rules contained in this agreement shall govern the hours of service and working conditions of the following classes of employees:

“Group I — Clerks. Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation, in connection with such duties, of office or station mechanical equipment requiring special skill and training such as typewriters, calculating machines, bookkeeping machines and other similar equipment.

“The above definition shall not be construed to apply to:

“(a) Employees engaged in assorting tickets, waybills, etc., nor to employees operating office or station appliances or devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders and work of like nature; nor to employees gathering mail or other similar work not requiring clerical ability.

“(b) Office boys, messengers and chore boys, or to other employees doing similar work.

“(c) Employees performing manual work not requiring clerical ability.

“Group 2 — Other Office and Station Employees, such as ticket examiners, gatemen, ushers; train announcers; assistant foremen; parcel room, baggage and mail handlers and other baggage and parcel room employees; janitors; station cleaners; elevator operators; telephone switchboard operators; station, office, storehouse and shop watchmen; matrons; restroom attendants; lamp room attendants; office boys, messengers and chore boys; mechanical device operators engaged in operating appliances or machines for perforating, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders and similar work and stores attendants.

“Group 3 — Laborers and others similarly employed in and around stations, storehouses and warehouses.

“EXCEPTIONS

“This agreement will not apply to:

“(a) Personal office force positions agreed to in conference entitled “Personal Office Force List No. 1.”

"Personal Office Forces will vary according to the organizations of departments and offices involved, it being the intent that the duties and responsibilities shall govern.

"(b) Individuals performing personal service not a part of the duty of the Carrier.

"(c) Such positions other than above as may be agreed to between the management and the representatives of the employees.

"NOTE — Exceptions to any rule or rules in this agreement may be made by mutual agreement between the representatives of the Carrier and the employees."

The sick leave memorandum which is also pertinent reads as follows:

"SICK LEAVE

"MEMORANDUM OF AGREEMENT

Between

THE WASHINGTON TERMINAL COMPANY

and the

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.**

"It is understood and agreed that the following rule relating to Pay Account Sick Leave — Clerks' Agreement will apply in compensating employees for time lost account of sickness, effective with May 16, 1936.

"SICK LEAVE

"(a) Where the work of an employee is kept up by other employees without cost to the carrier, an employee who has been in continuous service of the carrier for (1) one years and less than two (2) years will not have deductions made from his pay for time absent on account of a bona fide case of sickness until he has been absent six (6) working days in the calendar year; an employee who has been in continuous service two (2) years and less than three (3) years, nine (9) working days in the calendar year, an employee who has been in continuous service three (3) years or longer, twelve (12) working days in the calendar year; provided, the remaining number of days currently earned and unused during any calendar year, not to exceed the regular annual maxima stated above, will be credited to the succeeding year; and, provided, further, these limits may be extended in individual meritorious cases and under the conditions specified, but only by agreement of the representatives of the carrier and of the employees.

"(b) Deductions will be made beyond the time allowance specified above; also one day's pay will be deducted within the sick allowance period for each day that additional expense was neces-

sarily incurred for keeping up the work of the absent employe, such deduction within the sick period, if any, to be properly certified.

“(c) The employing officer must be satisfied that the sickness was bona fide. Satisfactory evidence as to sickness, in the form of a certificate from a reputable physician (preferably a company physician), will be required in case of doubt.”

The Memorandum of Agreement is identical to the Agreement signed July 10, 1936 by the employes with the Carrier and revised on July 20, 1949 to conform to the forty hour week agreement.

The issue in this case is whether or not the Sick Leave Agreement covers all employes listed in the Agreement or is limited to the clerk's classification.

It has been held by this Board in many awards that where the Agreement is clear and unambiguous the Board has no right to vary its terms.

In reaching a decision in this case the Board must first determine as to whether or not the Agreement as to its application is clear and unambiguous on its face.

We have made a careful study of the Agreements and in our opinion we do not believe that it can be said that they are clear and unambiguous as they apply to the case before us.

There have been many awards by this Board that where an Agreement is not clear and unambiguous, past practices, customs and other pertinent factors are to be taken into consideration in making an award.

We have thoroughly looked into the record presented in this case and we believe that the past practices and custom clearly indicates that the Sick Leave Agreement only applies to the clerks classification.

Comment should be made as to Claimant Dominic Leonardi. The record shows that this Claimant was a clerk at the time his claim was filed. However, he had been a clerk for only a period of four months and under the provisions of the Agreement he had insufficient service as a clerk to qualify for sick leave.

In view of the above the claims are denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1962.